

Exhibit 4

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1 Volume 1

2 Pages 1-51

3 UNITED STATES DISTRICT COURT

4 FOR THE DISTRICT OF COLUMBIA

5 Civil Division

6 Civil Action Number 03-CV-01798 (EGS)

7

8 THERESA M. OWENS,

9 Plaintiff,

10

11 vs.

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13 ELI LILLY AND COMPANY,

14 Defendant.

15

16 *****

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18 DEPOSITION of MERLE BERGER, M.D.

19 Boston IVF

20 One Brookline Place

21 Brookline, Massachusetts

22 Wednesday, November 9, 2005

23 10:35 a.m.

24

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1 uterus?

2 A. Yes.

3 Q. Doctor, your letter to Mr. Levine
4 summarizes your opinion, the one in June 2003, and
5 you said "It was and is my impression that DES
6 exposure in utero was the sole cause of this
7 couple's primary infertility." Now, Doctor, back in
8 1993 was it your view then that DES was the cause of
9 this couple's infertility?

10 A. Yes.

11 Q. Is that something, Doctor, that you told
12 this couple -- that DES was --

13 MR. LEVINE: I object. He did not say
14 that and it is missing from both the letter of
15 June 21st and June --

16 MR. DILLON: You may object, but I'm
17 asking the Doctor a question at deposition.

18 MR. LEVINE: You are asking questions
19 based on an assumption of false facts because the
20 word "DES" is specifically and conspicuously absent
21 from those two letters.

22 MR. DILLON: I can read the letters, I
23 think, as well as you can, Mr. Levine, so I think if
24 you would just make an objection by saying the word

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1 "objection," you can then ask any questions of

2 Dr. Berger you like after we're done.

3 Q. Doctor, going back having Mr. Levine now

4 expound on his views of the facts, going back it was

5 your view back in 1993 that DES was the cause of

6 this couple's infertility; is that correct?

7 A. Yes.

8 Q. Is that for the same reasons that you've

9 described now about the uterine malformation and

10 potential unknown mechanisms in the uterus as well?

11 A. Yes.

12 Q. Doctor, did you, in fact tell

13 Mr. and Mrs. Owens when you saw them that your view

14 was that their problem had its root in DES?

15 A. That I can't recall -- exactly the words I

16 used and what I told them, no.

17 Q. Certainly, if they had asked you in 1993

18 what you thought was the root of their infertility

19 cause, you would have told them your view that it

20 was DES; isn't that right?

21 A. Yes.

22 Q. Doctor, obviously you have a lot of

23 experience with patients with infertility. Is it

24 your practice to be candid with your patients about

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1 your concerns or your views about the capacity of
2 Mrs. Owens' uterus to carry a pregnancy; is that
3 correct?

4 A. Yes.

5 Q. And that, in your view, was due to in utero
6 exposure to DES; is that right?

7 A. Yes.

8 Q. So if, in fact, the Owenses had asked any
9 questions about why a surrogate or a gestational
10 carrier was necessary, would you have told them that
11 it was due to the fact that she had a DES uterus?

12 A. I might have, yes.

13 Q. If they had asked why Mrs. Owens had a
14 small and unusual uterus, I take it you would have
15 shared your view that it was due to in utero
16 exposure to DES?

17 A. Absolutely.

18 Q. Doctor, I don't have any further
19 questions.

20 CROSS-EXAMINATION

21 BY MR. LEVINE:

22 Q. This is Mr. Levine, and I have a couple of
23 questions for you. Based on your comprehensive
24 review of this woman's history, her tests, her